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Comments on RM-9242
Office of the Secretary (1800), Room 222
Federal Communications Commission
1919 M Street NW
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The following comments on this rulemaking are submitted by Harold Hallikainen. My involvement in the broadcast industry extends back to 1970. The comments expand a bit beyond the specifics discussed in the petitions to discuss alternatives presented in other petitions and my views with respect to these alternatives.

These comments are available in electronic form at <http://hallikainen.com/lpfm>.

Summary

This petition and my comments address several perceived needs in broadcasting. These are:

1. Increase localism in radio.
2. Decrease entry costs for new broadcasters.
3. Increase the diversity of voices in radio.

Many, myself included, believe that a low power FM broadcast service would serve these needs.

Localism

It has been proposed that low power FM broadcast stations will be better able to serve "niche" program interests (see, for example, the Leggett petition, RM-9208). The Leggett petition lists several examples of niche programming: golfing, flying, archery, etc. I believe that interests such as those listed are better served by a broadcast service covering a wide area, since the concentration of persons with that interest are likely to be relatively constant over a large area. A station covering a large area has a lower cost of serving an individual than a station covering a small area (using a "cost per thousand" basis, as is used in advertising costing). However, there are interests that are truly local. These are geographic based interests such as neighborhood or municipality issues. A low power FM service can meet these needs in a more cost effective manner than a full power FM service can.

In its various proceedings on the Main Studio Rule and the Suburban Community Policy (for a relatively detailed history of these, see <http://www.broadcast.net/~hhallika/insite/insite95.html>), the Commission

questioned whether the community a station is licensed to has issues that are distinct from those of the larger community covered by a full-power station. In relaxing its main studio rule (to the current allowance for the main studio to be anywhere within the principal community contour and the proposed further relaxation of the rule to allow a station to locate its main studio outside the principal contour, possibly far from any of its listeners), the Commission has encouraged stations to run programming responsive to the entire coverage area instead of the community of license. A lower power station would similarly program to the interests of the citizens of its coverage area. However, since the coverage area is much smaller, more local issues can be dealt with.

There are many local issues that are of great importance to the citizens of that area, but of little importance to others. In San Luis Obispo County, the community of Los Osos has a controversy regarding a proposed sewer project. The full-power station licensed to Los Osos has provided minimal, if any, discussion of the issue. It, instead, provides music programming of interest to the citizens of its much larger coverage area. Also, as permitted by the main studio rule, this station does not have its main studio in the community of license, instead choosing to locate its studio in the larger city of San Luis Obispo.

I believe only one city in this county has its city council meetings broadcast on a full-power station. The city of San Luis Obispo has its meetings broadcast on a relatively low power NCE station that provides good coverage of the city and marginal coverage of other cities. The city of Morro Bay videotapes its meetings and broadcasts them later on the local CATV system. It is interesting to note, however, that the city council meetings of the city of Grover Beach are broadcast by an unlicensed FM station ("Excellent Radio"). The full-power station licensed to Grover Beach, again, chooses to serve the larger audience within its coverage area (and locate its studio outside the licensed community). Finally, a NCE station licensed to San Luis Obispo (city) broadcasts the county board of supervisors meetings. This is a good application of a full-power station, since this station fully covers the county and only half of an adjacent county (Santa Barbara county). However, this station operates FM translators that cover the rest of Santa Barbara county. These low power FM stations could be used to provide programming of interest to the local areas they cover. However, current FCC rules prohibit these stations from originating programming. The population covered by these FM translators probably have little interest in the board of supervisors of an adjacent county close to 100 miles away.

Having a full-power station broadcast programming of interest to only a limited geographic area would be inefficient use of the spectrum. Therefore, it makes sense for the local broadcast needs to be served by a low power FM service instead of by full-power FM stations, which should continue to serve the common interests of the larger community.

Entry Costs

Due to market conditions, full-power FM stations are quite expensive, beyond the reach of a large portion of the population. Though the FCC dismissed spectrum scarcity when it dropped the Fairness Doctrine, I believe everything is scarce, we just have varying degrees of scarcity. The degree of scarcity of FM broadcast spectrum has set the market price of full-power FM stations quite high. Note that it is *market price* that generally sets the entry price for one getting into broadcasting. Even though the FCC has not as yet used spectrum auctions in determining broadcast licensees, it is the market which determines the price of stations. I believe that the only practical way to make a lower priced broadcast station is to make one that is less valuable. This can be achieved by limiting its coverage (low power) and by imposing an ownership limit (I propose a limit of one station per person or other organization).

Limiting market value of stations is the best approach to providing an affordable radio service. Use of lotteries as a method of awarding licenses provides a low cost for some arbitrary individual while denying a license to a perhaps more qualified individual. The way to make most efficient use of the spectrum is to license it based on its economic value through the auctioning of spectrum leases. This also provides continuing income to the public for use of a public resource. This income could be used for a variety of purposes, including, as Congress chooses, children's television, political advertising, or whatever.

As a further decrease in entry cost, I propose, when spectrum becomes available, a license-free low power FM broadcast service. These stations would operate on frequencies dedicated to this use (adjacent to the existing FM broadcast band), would not have to pay any application fee or spectrum fee, and would not be provided with any interference protection. Interference would be minimized (though not eliminated) by requiring the use of FCC approved equipment.

Diversity of Voices

Increasing the number of stations while maintaining a strict ownership limit will increase the number of voices serving a community. I believe it serves democracy to have a wide number of opinions heard. Diversity of voices is an important goal.

Discussion

I generally agree with the introductory portion of the petition in that there needs to be a low cost local radio service. The fact that such a service exists for television and does not exist for radio seems to be a bit of a paradox.

In paragraph 2, the petitioner voices concern over the lack of diversity of voices in radio. In paragraph 3, the petitioner indicates that the Department of Justice (DOJ) "seems to think that anything over 40% ownership in one market constitutes a problem." I believe the FCC, with direction from Congress, is responsible for insuring the "diversity of voices," while the DOJ is more interested in restraint of trade issues. These are, to me, separate issues. The existing FCC regulations on ownership within a market attempt to strike a balance between the provision of the public with a diversity of voices and the provision of the public with a low cost broadcasting service (by allowing one broadcaster to own and program several channels).

I believe the FCC should stay out of content regulation. That is, they should not mandate local programming. It appears that the current regulatory environment allows listeners to vote with their ears instead of their being force fed that programming which the government feels is best for them. While many of us desire more local programming, I don't believe it's the government's job to mandate it. It is our job as citizens to convince broadcasters to carry local programming by sending them letters and by listening to such programming in large enough numbers to make the production of such programming economically attractive.

In paragraph 6, the petitioner suggests that an LPFM license be awarded to the current holder of an LPTV who is expected to be "bumped" in the DTV proceeding. However, since these licenses were granted with the understanding that they were "secondary", it appears no special compensation is necessary due to the "bump." The license was and still is secondary.

Similarly, it has been suggested (though not in this petition) that exiting AM broadcast stations receive a low power FM station to rebroadcast their signal. While this is supposed to help those stations on AM and help the AM band, it would most likely result in a decrease in listenership on the AM band, since people could hear the same programming with the higher audio quality available on FM. Further, this "simulcasting" is an inefficient use of the spectrum. Finally, simulcasting does nothing to increase the diversity of voices, and, in fact, prevents another voice from being heard via low power FM. The licensees of these stations bought (or built) these stations knowing they were AM broadcast stations. They should not now be automatically converted to FM.

In paragraphs 11 through 14, the petitioner notes the economic barriers to entry into broadcasting. The petitioner proposes a local ownership requirement for LPFM and the use of lotteries in awarding licenses.

I believe the local ownership requirement is unnecessary and difficult to enforce. A simpler approach would be a numerical limit on the number of stations an LPFM licensee could own. I would propose a total attributable ownership interest of one station for any LPFM licensee. A particular LPFM licensee could own 100% of one broadcast station (such as the LPFM), 50% of two stations (which could be LPFMs or a mixture of full power and LPFM stations). This ownership limitation will limit the market value of LPFM stations, making it easier for people to get into broadcasting. Further, with such an ownership limitation, most people would voluntarily choose to live near the station they own. The Commission has attempted something similar to a local ownership requirement in the past (the "ownership integration preference") without much success.

In paragraph 14, the petitioner suggests the use of lotteries instead of the Congressionally mandated auctions to decide amongst mutually exclusive applicants. It is reasoned that auctions will result in a lower cost for a new licensee. However, the Commission has not had much success with auctions in the past. It has resulted in "application mills" selling members of the public the chance to win something of value (the FCC license). This does not seem to be the most appropriate method of determining who should get to use a valuable public resource with no payment to the public. Further, once an initial license is granted under a lottery, the licensee is free to sell the license (perhaps after some limited "anti-trafficking" delay) *for the market value*. Thus, winners of the lottery are subsidized by the government while later licensees must pay the market value for a station. Any breaking of economic barriers of entry to broadcasting due to use of a lottery will be short lived.

It appears, instead, that the Congressionally mandated approach is the best approach. Through use of auctions of fixed term spectrum *leases*, the public is fully compensated for the use of the spectrum. Note that I propose *spectrum leases* as opposed to the current Commission procedure with mutually exclusive applications where there is *almost* a *sale* of the spectrum, since the auction winner gains a renewal expectancy along with the license. The public is paid once for the use of the spectrum instead of being paid for its ongoing use. The use of a lease with its continuing income would indeed be income to the public which could be used in balancing the federal budget. Sale of an asset is *not* income that can be used in balancing a budget in typical accounting.

It has been argued that use of auctions will price such station licenses outside what most people are able to pay. As pointed out above, use of a lottery only prevents this problem for the initial licensee. All subsequent licensees must pay full market value. Further, it appears fair that the public be compensated for use of a public resource. The way to make such stations affordable is to limit the market value for such stations. This can be achieved by limiting their power and coverage along with the ownership limit

of one station (total). Low entry cost should be achieved by making a truly low cost service, not by subsidizing entry for some while denying it to others who are equally qualified.

In paragraph 15, the petitioner gives recognition to the "pirate radio problem." Unlicensed radio operators feel they have been given support by the court in that the court (in *Dunifer v Fcc*) has at least somewhat accepted Dunifer's free speech arguments (are the existing FCC rules the least restrictive method of regulating "speech" necessary for a legitimate government interest?). The prohibition of low power FM stations that originate local programming while licensing thousands (a guess) of stations of the same power that import programming (and are prohibited from originating programming) certainly raises questions as to why the FCC is placing such a severe restriction on program content (no local programming). A provision for a low power FM service would remove this question.

In paragraph 16, the petitioner expresses support for a diversity of voices in local radio programming. Although I do not feel we are approaching having the point of the public being left with nothing but Radio Moscow, I do feel that diversity of voices is very important. More local stations (along with appropriate ownership limitations) can provide greater diversity of voices.

In much of the remainder of the petition, a detailed proposal for a new radio service is proposed. This proposal includes several classes of stations, some of which would be almost indistinguishable from existing full power stations. While it appears that a lot of work went into this proposal, it seems that a much simpler approach that could be used to establish an LPFM service would be to simply remove the prohibition of local program origination that currently exists for FM translator stations (just as was done to establish the LPTV service). The LPFM service already exists! All that is necessary is to remove the program restriction. I would also put the proposed ownership limit in place (while providing a transition period for existing translator owners to divest down to the new limit).

The petition also speaks of the possibility of eliminating protection for second adjacent, third adjacent and IF separations. If indeed these protections can be eliminated or relaxed due to improvements in FM receiver design, this should be dealt with in a separate rulemaking regarding FM interference considerations in allocations. Such a relaxation would then apply to full-power as well as low-power FM stations.

In paragraph 27, the petitioner proposes a special class of temporary low power FM stations. There is indeed a need for such temporary stations, whether for large concerts, dance camps, or county fairs. However, I believe that this class of station could be dealt with on a license-free basis.

When spectrum is available, I would propose the establishment of an unlicensed low power FM service (along with the licensed service described above). Spectrum could possibly become available in the spectrum shuffle of digital television, possibly leaving television channel 6 vacant nationwide, allowing for the expansion of the FM broadcast band down into this spectrum. These unlicensed stations would be similar to existing part 15 intentional radiators or low power communications equipment, though the power level would be enough to provide coverage over a neighborhood (perhaps a 1 kilometer radius) with a typical home FM receiver. These stations (similar to those proposed in the Leggett petition) would operate on channels dedicated to unlicensed broadcasting, would use FCC approved transmitters and antennae, would not require any FCC license or FCC notification, would not have to pay a spectrum fee, and would not receive any interference protection. These unlicensed stations would be the very low cost method of entering broadcasting, followed by the licensed LPFM service, followed by the full power FM

service. The unlicensed service would handle special event broadcast requirements.

In paragraph 49, the petitioner proposes the use of "filing windows" as opposed to an allocation table in granting licenses. This is done in an effort to decrease the number of applicants for an allocation. However, to find the true market value for the channel, it is desirable to have a large number of participants in the process. I don't believe the Commission should use an almost secret process that only insiders know about to award valuable spectrum. This should be a very public process.

In paragraph 51, the petitioner outlines a process for determining the allocation of channels (based on an individual interference study). Since each applicant would need to prepare such an interference study and would not be aware of potential interference caused by applications not yet filed, this appears wasteful of engineering resources. It appears more economical to "do the engineering once" by having the FCC determine where channels will fit based on interference criteria, and allocate those channels to those locations (specifying a latitude and longitude for a transmitter location along with a radius of allowable deviation from that location). Although there are various sized "gaps" in the existing FM allocations where LPFM stations of various powers could exist, it seems simpler to just have one more class of FM station (we already have quite a few now that the A, B, and C have been broken into several subclasses) that is the same power as the existing maximum for FM translator stations. If it fits, it goes in.

In paragraph 57, the petitioner proposes ownership limits on LPFM stations. While the petitioner proposes a maximum of three stations per licensee, I would propose a limit of one station per licensee (allowing an owner to own various fractions of several stations as long as the sum of the fractions do not exceed one). This limitation is necessary to limit the market value of stations, allowing them to be obtained at low cost. We're building a Yugo so people can get into broadcasting. Later they can get the Cadillac.

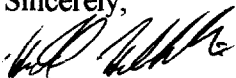
In paragraph 60, the petitioner proposes the use of FCC approved equipment (type-accepted) by LPFM stations. I agree with the petitioner that this is necessary to protect the integrity of the spectrum.

In paragraph 62, the petitioner proposes a minimum operating schedule for certain classes of stations. It would appear this would be unnecessary if the licensee is indeed paying full market value for use of the spectrum. The licensee has little possibility of making an income to pay for that use of the spectrum if the station is not operating.

In summary, I believe the FCC should establish a low power FM service. This is most simply accomplished by authorizing local origination on FM translator stations. In addition, it would be desirable to establish an ownership limit for such stations, and to use the auction of spectrum leases in licensing such stations. When spectrum becomes available, a license free low power FM service should also be established.

Thank you for the opportunity to comment in this proceeding.

Sincerely,



Harold Hallikainen